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IN THE UNITED STATES DISTRICT COURT  
CENTRAL DIVISION, DISTRICT OF UTAH

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FILED  
U.S. DISTRICT COURT  
2005 SEP 12 A 9 02

LYNN D. SPENCER and CARMEN A.  
SPENCER,

Plaintiffs,

vs.

JAMES H. CLARK & SON, INC., a  
Utah Corporation,

Defendant.

Case No. 2:04

By: CV-698 TS  
DEPUTY CLERK

REPORT AND RECOMMENDATION

JUDGE TED STEWART

MAGISTRATE JUDGE BROOKE C.  
WELLS

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Previously, this court entered an order granting Defendant's Motion to Compel. See Order dated August 2, 2005, docket no. 37. In that order the court stated, "should Plaintiffs fail to comply with the court's order, the court will recommend to the District Court that Plaintiff's complaint be dismissed." Id. Plaintiffs have wholly failed to comply with the court's order.

On August 17, 2005, Defendant filed a Motion to Dismiss based upon Plaintiffs' failure to comply with the order. See Motion, docket no. 38. Plaintiffs have not filed any opposition to that motion and the time to do so has expired. See DUCivR 7-1(b)(3).

Based on the record before the court, the court finds that Plaintiffs have failed to meet deadlines, provide requested

discovery, and have shown a general lack of interest in prosecuting their case. Dismissal for failing to prosecute a case should only be imposed after careful exercise of judicial discretion. See DeBardleben v. Quinlan, 937 F.2d 502, 504 (10th Cir. 1991). Nevertheless, dismissal is an appropriate disposition against a party who disregards court orders and fails to abide by court rules. See Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 642-43 (1976). Based on Plaintiffs' failures, the court hereby RECOMMENDS that the district court DISMISS this action. Attached to the court's recommendation is a proposed order filed by Defendant which grants Defendant's Motion to Dismiss.

Copies of the foregoing report and recommendation are being mailed to all parties who are hereby notified of their right to object. The parties must file any objection to the Report and Recommendation within ten days after receiving it. Failure to object may constitute a waiver of objections upon subsequent review.

DATED this 9th day of September, 2005.

BY THE COURT:

A handwritten signature in cursive script, reading "Brooke C. Wells".

Brooke C. Wells  
United States Magistrate Judge

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Attorneys for Defendant James H. Clark & Son, Inc.

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF UTAH, CENTRAL DIVISION

LYNN D. SPENCER and CARMEN A.  
SPENCER,

Plaintiffs,

vs.

JAMES H. CLARK & SON, INC., a Utah  
Corporation,

Defendant.

ORDER OF DISMISSAL

Judge Ted Stewart

Magistrate Brooke Wells

Case No.: 2:04cv00698

The court, having entered an order on August 2, 2005 granting defendant's motion to compel and requiring plaintiffs to produce to defendant outstanding discovery responses and to pay defendant the amount of \$2,500.00 in attorney fees by August 15, 2005 or face dismissal of this case; and having been notified by defendant's counsel that plaintiffs have failed to comply with the August 2, 2005 order, being otherwise fully advised in the premises and for good cause appearing, hereby

ORDERS, ADJUDGES and DECREES that the above-entitled action is dismissed without prejudice and that plaintiffs shall be precluded from refiling this action until attorney fees are paid pursuant to the August 2, 2005 order.

ENTERED this \_\_\_\_ day of September, 2005.

BY THE COURT

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HONORABLE TED STEWART  
United States District Court Judge

RECOMMENDED BY:

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HONORABLE BROOKE C. WELLS  
Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_ day of September, 2005, a copy of the foregoing order for dismissal was sent via United States Mail, postage prepaid, to the following:

Mark C. Quinn  
CALLISTER, NEBEKER & MCCULLOUGH  
Gateway Tower East, Suite 900  
10 East South Temple  
Salt Lake City, Utah 84133

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